

WATER COUNCIL MEETING

Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

March 10, 2004
9:00 a.m.

Members present: Councilors Bridges, Bradley, Butler, Densberger, DiMarzio, Dupee, Funk, Phillips, and Varotsis

Members absent: Councilors Cowan and Patenaude; Councilor Perry or his designee, William Ingham; Councilor Flynn or his designee, David Barrett; Councilor McLeod or his designee, Johanna Lyons; and Councilor Manoogian or her designee, Ben Frost

Vacancies: Appointee representing agricultural interests

Chairman Bridges opened the meeting at approximately 9:00 a.m.

1. Approval of Minutes of February 11, 2004 Meeting

A motion was made by Councilor Bradley to accept the minutes of the February 11, 2004 meeting as presented. The motion was seconded by Councilor Dupee and it was unanimously voted.

2. Appeals Update

Michael Sclafani distributed an Appeals Status Report and reviewed the report with the Council.

- **Docket No. 03-10 WC - Appeal of Conservation Law Foundation**
A stay remains in effect in this appeal. The water quality certificate which is the subject of the appeal is related to the granting of a Wetlands permit to remove groundwater. CLF has filed a request for reconsideration of the granting of the permit with the Wetlands Bureau, which was denied on March 4, 2004. CLF indicated by fax to Mr. Sclafani that it intends to exercise its right to appeal the decision to the Wetlands Council.
- **Docket No. 03-14 WC - Appeal of Gerald A. Bell**
A stay remains in effect. Parties are to appear before the Council on April 14, 2004 to present a status report.
- **Docket No. 03-15 WC - Appeal of Lamprey Suburban, Inc.**
Appellants filed a Notice of Withdrawal on February 20, 2004.
- **Docket No. 03-19 WC - Appeal of Pennichuck Brook Watershed Council**
On February 17, 2004, a written Decision & Order was issued denying appellant's Motion for Reconsideration.
- **Docket No. 03-20 WC - Appeal of Governor's Island Club Inc.**
This appeal was dismissed at the Council's January 14, 2004 meeting and the deadline for the appellants to file a motion for reconsideration of the dismissal has now passed.

- **Docket No. 04-01 WC - Appeal of Town of Nottingham**
Docket No. 04-02 WC - Appeal of Town of Barrington

The parties have reached a settlement agreement which has been signed by all parties. A withdrawal of both appeals is expected by the April Council meeting.

- **Docket No. 04-05 WC - Freudenberg-NOK General Partnership**

A notice of appeal of Water Division Administrative Order WD 04-001 was timely filed on February 20, 2004 along with an appearance by Attorney Nicholas J. Lazos on behalf of Freudenberg-NOK. There is a question regarding the ownership of the dam which is the subject of the Administrative Order and a title search is being conducted. The appellant filed a Motion to Stay action on the appeal for a period of 30 days or until a determination of title is agreed to by Freudenberg-NOK and the Water Division. An appearance was filed by Attorney Harbaugh on February 23, 2004 on behalf of DES.

Councilor Butler made a motion to accept the appeal. Councilor Funk seconded the motion and it was unanimously voted.

Councilor Varotsis made a motion to grant appellant's Motion to Stay and Councilor DiMarzio seconded the motion. It was unanimously voted.

6. Legislation

Russell A. Nylander, P.E. presented a report on legislation being tracked by the Water Division. Councilor Varotsis asked for a recap of SB 534 which was recently introduced. Mr. Nylander explained that the bill reorganizes several areas of state government and sections 48-51 have a direct effect on the Water Division. Section 51 transfers the coastal zone management program and the New Hampshire estuaries project from the Office of Energy & Planning to DES. Sections 48 and 49 transfer certain public health and radiological programs from the Department of Health and Human Services to DES. Section 50 shifts the responsibility for nomination of the director of the water division from the Water Council to the commissioner of DES. Mr. Nylander stated that a hearing has been scheduled today at 1:15 p.m. on the bill.

Several councilors expressed concern about changing the process for nominating the director of the Water Division. The current process allows for input by the Water Council members who represent a broad range of interests throughout the state. The Councilors are familiar with the issues before the Division and are in a unique position to make a nomination based on professional abilities, experience and knowledge best suited to the position.

Councilor Densberger made a motion that the Council oppose the language in SB 534, Section 50 which changes the process by which the director of the water division is nominated. Councilor Varotsis seconded the motion and it was unanimously voted with Councilor Dupee abstaining.

A letter to Senator Russell Prescott will be prepared by interested Council members right after the meeting on behalf of the Council and several councilors will represent the Council's position at today's hearing.

Councilor Dupee explained to the council that two programs will be transferred from the Department of Health and Human Services to DES, the Bureau of Environmental and Occupational Health and the Bureau of Radiological Health. These groups work closely with DES personnel and the programs are complementary.

Mr. Stewart noted that the estuary and coastal zone management programs now with the Office of Energy and Planning are also proposed for transfer to DES and will likely come into the Water Division. DES works closely with personnel from both of these programs now, particularly in the shellfish program and in saltmarsh restoration. DES supports both the OEP and DHHS program transfers proposed in SB 534.

3. Watershed Rules - Env-Ws 386, Protecting the Purity of Regulated Watersheds

Sarah Pillsbury, P.G., Water Supply Engineering Bureau, presented proposed amendments to Env-Ws 386 which would exempt agricultural and forestry operations from the Pennichuck and New Hampton water supply watersheds as long as best management practices are followed.

4. Dam Removal Projects

Stephanie Lindloff, River Restoration Coordinator, reported on dam removal projects.

- Bearcamp River Dam, South Tamworth The Bearcamp River Dam was removed in September 2003. It was a privately owned dam originally constructed in 1929 to power a small furniture and toy manufacturing facility which burned in the 1940s. It had not been used since then and had become a safety hazard. Stephanie worked with the owner to effect removal of the dam which reconnected about 28 miles of the Bearcamp River and restored the ability of fish to move from Ossipee Lake into the headwaters located in the Sandwich range wildness of the White Mountain National Forest. The removal was done by the DES dam maintenance crew at a substantial savings to the owner. The project was originally estimated to cost \$120,000 but actually came in at \$75,000. Both the left and right abutments and one of the piers were retained for historical purposes.
- Program Overview The River Restoration Program was established in 2001. Stephanie works with a broad range of individuals and groups interested in removal of dams and provides general information about dam removal, assists with obtaining funds to offset the cost of removal, and provides guidance throughout the permitting process. A comprehensive guidebook to the regulatory requirements for dam removal has been developed.
- Three dams have been removed in two years and a feasibility study is in the works on an additional four dams. Stephanie is currently involved in managing or assisting about 25 projects in various stages statewide. More than \$600,000 has been raised to fund projects through grants from state and federal agencies, corporations, conservation organizations, and a variety of other groups interested in these projects. An article has recently been published describing the program in the *Journal of Water Science and Technology*.

- West Henniker Dam The Town took ownership of the dam in the 1990s. The town is pursuing removal of the dam because there are significant safety issues and it is not serving any functional purpose. Removal of the dam would restore 15 miles of the Contoocook River to free flowing which would benefit juvenile Atlantic salmon currently stocked in the Contoocook River. This is a high quality river and one of the most popular whitewater rivers in the Northeast. The project is estimated to cost \$160,000 and will be financed through a variety of sources with the DES dam maintenance crew doing most of the work.
- Merrimack Village Dam Pennichuck Corp. took ownership of the dam in the 1960s for supplementary water storage. The dam has never been used for that purpose and Pennichuck is interested in either removing it or transferring ownership. The dam is located in the middle of the Town of Merrimack and is considered to be a low hazard dam. It does, however, have a significant impact on migratory fish. The dam is located 1700' upstream of the confluence of the Merrimack River so restoring fish access above this dam either through removal of the dam or through fish passage would open up access to 16 miles of river and several tributaries. A feasibility study is being prepared in order to provide the town with the information it needs to make an informed decision about possible ownership of the dam. The cost of the study is estimated to be about \$54,000 and will be funded by Pennichuck and the NOAA Restoration Center.

Mr. Stewart remarked that this program has been very successful under Stephanie's leadership due to her ability both to work with various interest groups and to obtain funding in order to move projects through to completion. The DES dam maintenance crew also has been a valuable resource in this initiative in completing projects at a cost under projections.

5. Estuary Wastewater Project Update

John Bush, P.E., Administrator of the Wastewater Engineering Bureau, informed the Councilors of an initiative underway to find a cost effective method for communities to treat wastewater without incurring the cost of upgrading their facilities every five years to more stringent EPA standards. This issue was raised originally in 1994 when the City of Rochester was under an administrative order from EPA to upgrade its treatment facility. The city looked at the possibility of a regional outfall that could transport effluent to a deep ocean outfall, but nothing further was done at that time. Senator Green introduced a bill to do a feasibility study. The bill passed and a committee was established. The committee prepared a RFP, which was submitted to 15 engineering firms from the DES pre-qualified list in November of last year. Three proposals were received. The committee rated the proposals and conducted interviews. It is estimated that the study will take approximately 18 months. SB 481 was introduced in this legislative session to establish the Estuary Alliance for Sewage Treatment (EAST) which is similar to the Winnepesaukee River Basin. Members of the alliance will have the ability to discharge secondary effluent into the pipeline which may free up capacity at the affected plants and may free up the budget dollars to address septage issues.

7. **Other**

Jaffrey/Peterborough: Councilor Butler requested an update on the Jaffrey treatment facility. Mr. Stewart advised that Jaffrey is under an administrative order from EPA and the town is currently looking at alternatives at the local level including the possibility of a joint Jaffrey/Peterborough project.

8. **Next Meeting**

The next meeting will be April 14, 2004.

9. **Adjournment**

The meeting adjourned at approximately 10:00.